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10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 BO AVERY, PHOEBE RODGERS, KRISTY
 13 CAMILLERI AND JILL UNVERFERTH,
 14 individually and on behalf of all others similarly
 situated,

15 Plaintiffs,

16 v.

17 TEKSYSTEMS, INC.,

18 Defendant.

Case No. 3:22-cv-02733-JSC

**PLAINTIFFS' REPLY IN
 SUPPORT OF MOTION FOR
 CLASS CERTIFICATION**

Date: February 1, 2024

Time: 10:00 a.m.

Ctrm.: 8 – 19th Floor

Judge: Hon. Jacqueline Scott Corley

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INTRODUCTION

Unless TEK can prove its administrative employee exemption defense, Recruiters are entitled to overtime pay. But the *merits* of TEK’s affirmative defense are for the future, not now. The different question this motion presents is whether TEK’s administrative employee exemption defense can be resolved class-wide. The answer is plainly yes. The robust evidentiary record demonstrates that the overtime claims rise or fall on common evidence that predominates over any individual inquiries. Notwithstanding TEK’s merits arguments, TEK’s corporate documents, corporate witness testimony, and data, combined with Plaintiffs’ cross-examined testimony and Recruiter declarations will show that Recruiters are production workers whose primary job duty does not relate to the management policies or general business operations of TEK or its clients.

TEK’s challenges to the commonality and predominance factors rely on a handful of uncontested declarations from captive current employees. These declarations fail to defeat class certification because most of the declarants testify about their duties as *Recruiter Leads*, and not in the entry-level *Recruiter* position that is the subject of Plaintiffs’ motion. Contrary to TEK’s characterization of the testimony in its brief, all declarants describe a common set of duties that do not deviate meaningfully from the duties that Plaintiffs and their declarants describe. Class-wide adjudication is the best mechanism to resolve the common question of whether TEK properly classified Recruiters as exempt from overtime requirements under the administrative exemption.

For these reasons, as well as those in Plaintiffs' opening brief, the Court should grant Plaintiffs' Motion for Class Certification.¹

ARGUMENT

I. Class Certification Is Not the Appropriate Time to Weigh the Merits of TEK's Affirmative Defense.

At the class certification stage, the Court's proper focus is on whether there is common evidence that supports "plaintiff's theory of recovery." *Brinker Rest. Corp. v. Superior Court*, 53

¹ Plaintiffs Exhibits 1 - 92 were filed with their moving brief. Exhibits 93 - 97 were filed in support of Plaintiffs' Reply Brief. A chart identifying their ECF Number and page number is annexed to the Declaration of Sally J. Abrahamson.

1 Cal.4th 1004, 1025 (2010). The Court should not “engage in free-ranging merits inquiries at the
 2 certification stage.” *Amgen v. Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455, 466
 3 (2013). And notably, even if the Court were to consider TEK’s merits theory, its position that all
 4 Recruiters were properly classified as exempt and performed the same primary duties undermines
 5 its contention that the claims should not be resolved in a class proceeding.

6 **II. TEK Misstates the Holding in *Harris*.**

7 TEK misstates the California Supreme Court’s holding in *Harris v. Superior Ct.*, 53 Cal.
 8 4th 170 (2011), claiming that the Court rejected the administrative/production analysis. But, the
 9 *Harris* Court expressly declined to “hold that the administrative/production worker dichotomy . . .
 10 . . can never be used as an analytical tool.” *Id.* at 190. Rather, *Harris* stands for the proposition that
 11 courts should consider not just the administrative/production dichotomy but all of the factors in 29
 12 C.F.R. § 541.205, as Plaintiffs have done here. *See* ECF No. 63 (“Pls.’ Br.”) at 25-27.² As the Court
 13 noted, Wage Order 4-2001—the applicable wage order here—incorporates certain federal
 14 regulations, including 29 C.F.R. § 541.205 (2000), which embraces the administrative/production
 15 analysis, distinguishing “activities relating to the administrative operations of a business” from
 16 “production” or “sales” work. *Id.* at 180.

17 Importantly, *Harris* does not bar certification in administrative exemption cases, as TEK
 18 argues. Multiple courts have certified classes in cases arising under California’s administrative
 19 exemption post-*Harris*. *See, e.g., Metrow v. Liberty Mut. Managed Care LLC*, No. 16 Civ. 1133,
 20 2017 WL 4786093, at *11 (C.D. Cal. May 1, 2017) (applying *Harris* and certifying the class);
 21 *Dobrosky v. Arthur J. Gallagher Serv. Co., LLC*, No. 13 Civ. 130646, 2014 WL 10988092 (C.D.
 22 Cal. July 30, 2014) (same); *Kress v. PricewaterhouseCoopers LLP*, No. 08 Civ. 0965, 2013 WL
 23

24 ² TEK admits that the Wage Order 4-2001 incorporates certain FLSA regulations, but then
 25 argues that Plaintiffs are somehow barred from citing case law that examines these federal
 26 regulations. *See* Def.’s Br. at 23-26 (incorrectly arguing that *McKeen-Chaplin v. Provident Sav.*
 27 *Bank, FSB*, 862 F.3d 847, 851, 855 (9th Cir. 2017), *Walsh v. Utilil Serv. Corp.*, 64 F.4th 1, 6 (1st
 Cir. 2023), and *Martin v. Cooper Elec. Supply Co.*, 940 F.2d 896, 903 (3d Cir. 1991) should be
 disregarded because they examine federal regulations).

1 140102, at *10 (E.D. Cal. Jan. 10, 2013) (same).³

2 **III. Common Questions of Law and Fact Predominate.**

3 TEK does not dispute that Plaintiffs have satisfied the Rule 23(a) elements of numerosity,
 4 typicality and adequacy.⁴ Its arguments concerning commonality and predominance are meritless
 5 and should be rejected.

6 **A. TEK Does Not Dispute that Common Evidence Will Show that All Recruiters
 7 Have the Same Primary Job Duty.**

8 Under California law, to classify an employee as exempt, the employer must establish that
 9 the employee's *primary* job duty meets the exemption requirements set forth in 8 Cal. Code Regs.
 10 § 11040(1)(A)(2).⁵ Pls.' Br. at 24. TEK does not meaningfully dispute that Recruiters' *primary job*
 11 *duty* is to screen and match job candidates to third-party companies' job requisitions.

12 At class certification, the appropriate inquiry is whether common evidence can be used to
 13 evaluate the primary duty. *Roseman v. Bloomberg L.P.*, No. 14 Civ. 2657, 2017 WL 4217150, at
 14 *7 (S.D.N.Y. Sept. 21, 2017), *aff'd*, 2018 WL 1470587 (S.D.N.Y. Mar. 23, 2018) (when all class
 15 members perform the same primary job duty, differences in *how* they perform their primary duty
 16 or in the auxiliary duties they perform will not defeat predominance); *Nelson*, 2015 WL 1778326,
 17 at *9 (finding that although "individual differences exist among the named Plaintiffs and absent
 18 class – as they would in any case in which hundreds of employees engage in the same job – the
 19 issues common to the class members predominate over those differences."); *see also McKeen-*

20
 21 ³ *See also DeLuca v. Farmers Ins. Exch.*, No. 17 Civ. 00034, 2018 WL 1981393, at *1 (N.D.
 22 Cal. Feb. 27, 2018); *Nelson v. Avon Prod., Inc.*, No. 13 Civ. 02276, 2015 WL 1778326, at *9 (N.D.
 23 Cal. Apr. 17, 2015); *Boyd v. Bank of Am. Corp.*, 300 F.R.D. 431 (C.D. Cal. 2014); *Campbell v.
 24 PricewaterhouseCoopers, LLP*, 287 F.R.D. 615, 628 (E.D. Cal. 2012).

25 ⁴ TEK only argues that Recruiters' tenure and their tenure in the Recruiter Trainee position
 26 was "not typical," without providing any supporting data, and it makes no Rule 23(a)(3) argument
 27 on "whether other [class] members have the same or similar injury, whether the action is based on
 conduct which is not unique to the named plaintiffs, and whether other class members have been
 injured by the same course of conduct." *Humes v. First Student, Inc.*, 758 F. App'x 593, 596 (9th
 Cir. 2019) (citation cleaned up).

28 ⁵ Lab. Code § 515(a) (if the employee "is *primarily* engaged in the duties that meet the test
 of the exemption. . . .") (emphasis added).

1 *Chaplin v. Provident Sav. Bank, FSB*, 862 F.3d 847, 855 (9th Cir. 2017) (“the question is not
 2 whether an employee is essential to the business, but rather whether her primary duty goes to the
 3 heart of internal administration—rather than marketplace offerings.”) (citation cleaned up).

4 TEK’s argument that the Court must look at every task that Recruiters perform every week
 5 is unsupported by case law, including the cases that TEK cites, and it also fails as a matter of
 6 common sense.⁶ In *Fjeld v. Penske Logistics, LLC*, No. 12 Civ. 3500, 2013 WL 8360535, at *3
 7 (C.D. Cal. Aug. 9, 2013), the court denied certification because the plaintiff only presented
 8 evidence about how *he* performed his tasks. Unlike the *Fjeld* plaintiff, Plaintiffs here rely on
 9 corporate documents and testimony, TEK’s data, Plaintiffs’ depositions, *and* declarations to
 10 demonstrate that all Recruiters share the same primary job duty.

11 **B. Common Evidence Demonstrates that All Recruiters Perform the Same
 12 Primary Duty.**

13 Tellingly, TEK does not address the testimony of its Rule 30(b)(6) designees Robert Doyle,
 14 Director of Strategic Specialization, and Leonardo DiBenedetto, Lead Training Facilitator, and the
 15 testimony of corporate witnesses Garrett Haycock, Senior Vice President of Talent Delivery, and
 16 Alex Pulido, Executive Director – Application Services and TEK’s Rule 30(b)(6) deponent in
 17 *TEKsystems v. Andiamo*, who admitted that Recruiters share all of the following job features that
 18 are relevant to their primary duty:

19 • **Recruiters match or “screen”⁷ candidates against requirements determined by
 20 TEK’s clients.** Ex. 4 (Doyle Tr.) 139:15-140:8, 158:1-159:24, 172:12-17 (Q: “But
 21 it’s still the recruiter’s job, then, to see if the information on the G2 matches a
 22 requirement?” A: “Completely, yeah. They’re going to look through the
 23 requirement and say this might fit or this might not.”), 181:19-21 (Q: “So recruiters
 24 shouldn’t generally be matching G2s or candidates with requisitions that are not

25 ⁶ In classifying all Recruiters as exempt, TEK does not engage in a week-by-week analysis
 26 of all Recruiters’ tasks.

27 ⁷ Multiple corporate documents describe Recruiters’ primary duty as “screening.” *See e.g.*,
 28 Ex. 48 (LA Welcome Packet) TEK-Recruiter_Lit-00539864-65; Ex. 49 (Sacramento Welcome
 Packet) TEK-Recruiter_Lit-00107557-58; Ex. 50 (San Diego Welcome Packet) TEK-Avery-
 00488750-51; Ex. 51 (TEK Acronyms) at TEK-Recruiter_Lit-00043958 (“Recruiter: Partners with
 AM to understand requirements & culture of a client. Screens consultants”); Ex. 52 (Coaches
 Guide Recruiter 1 Participant Guide) at TEKRecruiter_Lit-00529902; Pls.’ Br. at 6, n.18.

1 qualified yet?” A: “It would largely be a huge waste of time to do so.”); Ex. 6
 2 (Haycock Tr.) 32:10-13 (Recruiters’ “job is to find the absolute best talent and the
 3 best match between the consultant’s skills, goals, and interests and the customer’s
 4 needs”), 59:2-11, 60:7-12 (Q: Recruiters’ “job is to try to bring . . . the appropriate
 5 people in by finding that appropriate match . . . ?” A: “Yes.”); Ex. 3 (DiBenedetto
 6 Tr.) 162:18-163:7 (listing Recruiter “high value activities” as “understanding the
 7 requirement and sourcing it”); Ex. 23 (Andiamo Rule 30(b)(6) Tr.) 165:18-24 (“All
 8 of the recruiters are going to be soliciting the same talent pool . . . -- in the industry
 9 of IT.”).

- 10 • **Recruiters work in a “producing role,” which TEK considers to be a sales**
11 position and not a human resources position. Ex. 3 (DiBenedetto Tr.) 90:13-91:8
12 (distinguishing Recruiters from human resources and noting Recruiters must have
13 good sales skills); Ex. 6 (Haycock Tr.) 60:7-12; 68:1-16 (“Anyone that is in a role
14 that is a salesperson account manager or recruiter, we consider those as producing
15 roles. Meaning that they are producing for the company. . . . they are a recruiter
16 that is producing. Meaning that they are a – they’re a recruiter that produces what
17 recruiters produce . . . They find people for jobs.”), 123:21-24, 136:13-23; Ex. 4
18 (Doyle Tr.) 65:24-66:5 (Q: “When you say ‘producing roles,’ what are you referring
19 to?” A: “So roles where you’ve got either sales-specific activities as part of your
20 job responsibilities, or you’ve got recruiting responsibilities as part of your job
21 duties, that would be what I’d call producing roles.”), 128:16-18 (Q: “And when
22 you’re saying ‘producers,’ there you’re referring to recruiters and AMs?” A: “That
23 is correct.”).⁸
- 24 • **TEK requires all Recruiters to meet the same production quotas.** Ex. 4 (Doyle
25 Tr.) 130:17-20 (Q: “But those expectations were the same in every branch office in
26 TEKsystems for recruiters, correct?” A: “Yes”); Ex. 6 (Haycock Tr.) 157:19-21 (Q:
27 “And these 25 points . . . that applies to recruiters nationwide?” A: “Yes.”).
- 28 • **Recruiters do not require specialized IT knowledge or training.** Ex. 3
29 (DiBenedetto Tr.) 121:1-7 (“The Recruiter is not [] an individual that has a
30 technical background per se.”); Ex. 4 (Doyle Tr.) 79:16-20 (Q: “Recruiters don’t
31 have any prerequisites before they’re hired to have any sort of technical knowledge,
32 is that true?” A: “That’s correct.”), 208:23-210:17.
- 33 • **TEK’s clients, not Recruiters, determine the job requirements for job**
34 **openings.** Ex. 4 (Doyle Tr.) 58:22-59:3 (Q: “[T]he customer is determining what
35 the customer needs for that position; is that correct?” A: “Correct.” Q: “And that’s

24 8 TEK’s corporate documents also show that the Recruiter position is a sales job and not a
 25 human resources job. *See* Ex. 33 (Mason Oct. 24, 2019 Email) at TEK-Avery-00492061 (“we
 26 are looking for sales focused individuals”); Ex. 64 (Ligouri Sept. 19, 2018 Email) TEK-
 27 Recruiter_Lit-00256524 (“If someone is interested in HR make sure you explain to them the
 28 difference between recruiting and Human Resources, they are not the same thing in regards to
 TEK. We consider our recruiter role inside sale”); *see also* Pls.’ Br. at 11 n.48.

1 true for all skill specializations?” A: “Yeah.”); Ex. 3 (DiBenedetto Tr.) 91:17-22
 2 (“we get customers . . . send us job requirements . . . and we are supporting them”).
 3

- 4 • **Account Managers, not Recruiters, directly communicate with clients**
 5 **regarding their hiring needs.** Ex. 3 (DiBenedetto Tr.) 114:23-25 (Q: “Who are
 6 recruiters trying to present candidates to? A: “Their account managers,
 7 specifically”), 115:9-14 (“[Recruiters] consistently remain in communication with
 8 the consultant while our account managers remain in consistent communication
 9 with the customers”), 121:25-122:13 (customer requisitions are provided to
 10 Account Managers); Ex. 4 (Doyle Tr.) 150:8-10 (A: “And generally it’s the Account
 11 Manager who contacts the client.” A: “I’d say generally, yes.”), 178:14-15 (“So
 12 generally Account Managers working with the customers”), 186:10-188:5, 189:11-
 13 25, 191:3-7, 191:22-192:4.
- 14 • **Recruiters do intakes, or “G2s,” that prompt Recruiters to gather specific**
 15 **information from candidates.** Ex. 6 (Haycock Tr.) 60:19-21 (“A G2 is an
 16 information form that we use to be able to collect information about the candidate”),
 17 151:1-12 (Recruiters expected to input G2 information into TEK’s database,
 18 Connected); Ex. 3 (DiBenedetto Tr.) 87:12-88:5 (same); Ex. 4 (Doyle Tr.) 130:25-
 19 152:18.
- 20 • **Recruiters undergo the same training.** Ex. 3 (DiBenedetto Tr.) 47:10-16 (Q: “The
 21 training on Degreed that’s provided to Recruiters, is that the same training that’s
 22 provided to all Recruiters nationwide . . . ?” A: “Yes.”), 61:7-63:10, 68:13-69:10,
 23 129:7-25; Ex. 4 (Doyle Tr.) 55:15-18 (Q: “Do Recruiters . . . go through the same
 24 13-week training . . . ? A: “They do, with a little bit of nuance”); Ex. 6 (Haycock
 25 Tr.) 129:17-132:12.
- 26 • **TEK’s clients, not Recruiters, determine who to interview, hire, and terminate,**
 27 **and how much to pay them.** Ex. 3 (DiBenedetto Tr.) 167:9-14 (testifying that
 28 Recruiters do not make hiring and firing decisions); Ex. 4 (Doyle Tr.) 158:1-12
 (client interviews the candidates), 192:13-193:8 (TEK’s clients make hiring
 decisions), 194:13-16 (Q: “But the customer makes the ultimate decision about the
 amount they’re willing to pay for the bill rate?” A: “Correct. Yes.”).
- 29 • **TEK does not consider Recruiters to be “managers” who “oversee[] the actual**
 30 **work getting done.”** Ex. 6 (Haycock Tr.) 36:16-17.
- 31 • **Recruiters do not evaluate the work performed by hirees.** Ex. 3 (DiBenedetto
 32 Tr.) 167:19-168:7; Ex. 6 (Haycock Tr.) 121:20-122:16, 144:18-145:12.

33 TEK’s corporate documents and data, Plaintiffs’ deposition testimony, and Plaintiffs’
 34 declarants corroborate this corporate testify. *See* Pls.’ Br. at 3-20. TEK maintains an internal
 35 database where Recruiters enter their activities in real time. *Id.* at 14-15. The data demonstrates
 36

1 that the vast majority of Plaintiffs' activities—approximately 72%—involved attempting to make
 2 contact with candidates, conducting intakes, and making calls. *Id.* Critically, an analysis of the
 3 Connected data for TEK's Recruiter declarants shows that approximately 66% of their activities
 4 were dedicated to attempted calls, conducting intakes, and making calls.⁹ The below chart
 5 demonstrates how, like Plaintiffs' data, TEK's Recruiter happy camper declarants' outreach grossly
 6 outnumbers their submittals and starts, and represents more than 50% of their work:¹⁰

	Attempted Contact	G2	Call	Submitted	Started
TEKsystems Declarants	19,664	20,232	18,622	3,379	424

7
 8 Courts have found this type of common evidence to be sufficient to grant certification in
 9 administrative exemption cases. *See, e.g., Nelson*, 2015 WL 1778326, at *2 (granting certification
 10 in a recruiter case relying on defendants' corporate documents and deposition testimony, among
 11 other evidence); *Metrow*, 2017 WL 4786093, at *1 (granting certification on similar evidence).

12 The cases on which TEK relies do not support its position that Plaintiffs' compelling
 13 common evidence can be overcome by a small set of cherry-picked, captive employee declarations.
 14 No. 68 ("Def.'s Br.") at 30-31. For instance, in *Marlo v. United Parcel Serv., Inc.*, 251 F.R.D. 476,
 15 483 (C.D. Cal. 2008), the court decertified the class where plaintiffs relied primarily on
 16 declarations and a survey. In *In re Wells Fargo Overtime Pay Litig.*, 571 F.3d 953, 957 (9th Cir.
 17 2009), the Ninth Circuit found that while "uniform policies detailing the job duties and
 18 responsibilities of employees carry great weight for certification purposes," a certification decision
 19 cannot rest solely on an employer's exemption decision. Likewise, the court in *Weigele v. FedEx
Ground Package Sys., Inc.*, 267 F.R.D. 614, 620-22 (S.D. Cal. 2010), decertified a class based on
 20 the same principle—that the plaintiffs had relied almost exclusively on defendant's classification
 21 policy. Plaintiffs provide substantially more evidence than TEK's uniform classification decision.¹¹

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 23
 24
 25 ⁹ Ex. 95 (Major Decl. 2) ¶ 17.
 26 ¹⁰ Ex. 95 (Major Decl. 2) ¶¶ 15-23, Attachment 6.
 27 ¹¹ TEK's reliance on *Arenas v. El Torito Restaurants, Inc.*, 183 Cal. App. 4th 723, 729 (2010)
 28 is similarly misplaced because unlike here, the *Arenas* plaintiffs relied almost exclusively on
 declarations and not common evidence.

1 In *Velazquez v. Costco Wholesale Corp.*, No. 11 Civ. 00508, 2011 WL 4891027, at *7 (C.D.
 2 Cal. Oct. 11, 2011), the court found that the job duty evidence was “vague.” Here, there is detailed
 3 evidence of what Recruiters do that is maintained in TEK’s database showing virtually every task
 4 that Recruiters engage in and what they must do to meet their weekly production quotas. In *Cruz*
 5 *v. Dollar Tree Stores, Inc.*, No. 07 Civ. 2050, 2011 WL 2682967, at *7 (N.D. Cal. July 8, 2011),
 6 the court decertified a class where plaintiffs and class member testimony contradicted the common
 7 evidence upon which plaintiffs relied. Plaintiffs’ testimony here is consistent with the corporate
 8 testimony that Recruiters’ primary job duty is sourcing and matching job candidates.

9 In *Barker v. U.S. Bancorp*, No. 15 Civ. 1641, 2017 WL 2620676, at *3 (S.D. Cal. June 16,
 10 2017), the court denied class certification because it found plaintiffs could not point to common
 11 evidence that would show what the class spent the majority of their time performing. Here, TEK’s
 12 data shows what Recruiters spent the majority of their time on—attempting to call candidates,
 13 speaking with candidates on the phone, and conducting G2 intakes. Pls.’ Br. at 12-14.

14 Finally, none of TEK’s cases require the Court to engage in a week-by-week analysis.

15 **C. Common Evidence Demonstrates Recruiters’ Primary Job Duties Are Not
 16 Directly Related to Management Policies or General Business Operations.**

17 To avoid paying overtime under the administrative exemption, TEK must prove each
 18 element of its exemption defense. The first prong requires TEK to prove that employees’ primary
 19 “duties and responsibilities involve . . . the performance of office or nonmanual work directly
 20 related to the management or general business operations of his/her employer or his employer’s
 21 customers.” 8 Cal. Code Regs. § 11040 (1)(A)(2)(a)(I).

22 TEK does not argue that some Recruiters engage in “administrative” work, while others do
 23 not. It explicitly argues that “Recruiters are unquestionably directly involved in the running and
 24 servicing of TEK’s clients’ businesses.” Def.’s Br. 24.¹² TEK argues a purported “fatal similarity”

25
 26 ¹² TEK’s assertion that Recruiters are exempt because they “staff critical positions” for TEK’s
 27 customers is also a strawman because “all employees of a business must serve some essential
 28 function, or their respective positions would not exist,” the correct inquiry is does “the employee’s
 value flow[] ‘to the management or operation of the business.’” *Rieve v. Coventry Health Care*,

1 that does not prevent certification but rather supports it. *Tyson Foods, Inc. v. Bouaphakeo*, 577
 2 U.S. 442, 457 (2016). TEK cannot (and does not) credibly argue that class certification is not
 3 appropriate with respect to the question of whether Recruiters' duties involve work directly related
 4 to the management or general business operations of TEK or its customers. *See Nelson*, 2015 WL
 5 1778326, at *6 (“Defendant does not argue that some DSMs engage in work directly related to
 6 management policies while others do not . . . Both parties thus offer a single class-wide argument
 7 on the merits of the ‘directly related’ prong.”).

8 At class certification, the question of whether TEK satisfies the first prong of the
 9 administrative exemption is susceptible to common proof. *See Roseman*, 2017 WL 4217150, at *7.
 10 The crucial question of fact (what is Recruiters' primary job duty) and law (whether that job meets
 11 the exemption) are common to the class. Further, the exemption requires that workers primarily—
 12 meaning more than 50% of the time—perform exempt work. All evidence demonstrates that
 13 Recruiters spent more than 50% of their day sourcing and matching potential job candidates to
 14 third-party job requisitions. Therefore, if sourcing and matching are not exempt activities, as
 15 Plaintiffs contend, Recruiters are eligible for overtime, and TEK is liable for unpaid wages. In
 16 other words, “by classifying all [Recruiters] as exempt, [TEK] violated mandatory overtime wage
 17 laws.” *See Martinez v. Joe's Crab Shack Holdings*, 231 Cal.App.4th 362, 380 (2014). This theory
 18 is ““by nature a common question eminently suited for class treatment.”” *Id.* (citation cleaned up).

19 Pursuant to *Harris*, at the merits stage, it is *TEK*’s burden to show that Recruiters' work is
 20 “directly related” to management by showing that the work is *both* qualitatively administrative
 21 *and* quantitatively administrative pursuant to the 29 C.F.R. § 541.205 (2000). *Harris*, 53 Cal. 4th
 22 at 181-82 (“Because the test is conjunctive, plaintiffs need only show that defendants cannot meet
 23 their burden as to either part of the test in order to succeed on their motion for summary
 24 adjudication.”) (citing *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794–795)). As a
 25 preliminary matter, TEK does not rebut the significant case law that employees on the frontlines,

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 27 *Inc.*, 870 F. Supp. 2d 856, 872-73 (C.D. Cal. 2012).

1 producing what a company offers the marketplace, are not performing work of the requisite
 2 “substantial importance to the management or operation of the business of his employer or his
 3 employer’s customers.” 29 C.F.R. § 541.205(a) (2000) (noting that “production” and “sales” work
 4 is not administrative exempt work); Pls.’ Br. at 25-27. TEK also admits that common evidence also
 5 exists that Recruiters are “production” or “sales” employees and, therefore, not engaged in work
 6 directly related to management. Def.’s Br. at 37 (admitting that Recruiters are evaluated on
 7 “production metrics”); *see also* Pls.’ Br. at 4-15.

8 In determining if the work is qualitatively administrative, *Harris* notes that 29 C.F.R. §
 9 541.205(b) is the regulation to determine if the employees’ primary duty is “running the business
 10 itself or determining its overall course or policies, not just in the day-to-day carrying out of the
 11 business’ affairs.” *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120, 1125 (9th Cir. 2002); *Harris*, 53
 12 Cal. 4th at 182. Common evidence here demonstrates that Recruiters are engaged in the day-to-
 13 day business of TEK, sourcing and matching candidates. In fact, TEK assigns the same customer
 14 requisition to multiple Recruiters.¹³ In doing so, TEK can then pitch a wider net of candidates to
 15 customers so it will not “get beat on a requirement” by a competitor’s candidate.¹⁴ In fact, only
 16 31.8% of the job requirements that TEK works to fill get filled by TEK’s candidates.¹⁵ Recruiters
 17 are not acting in some administrative role directly related to management with TEK or TEK’s
 18 customers but are helping TEK sell its candidates to customers. *See Walsh*, 64 F.4th at 8 (noting
 19 that dispatchers did not meet this management prong of the exemption because they provided day-
 20 to-day services to the employer’s customers and did not “analyze how [systems] work or how they
 21 can be improved”); *Su v. F.W. Webb Co.*, No. 20 Civ. 11450, 2023 WL 4043771, at *9 (D. Mass.
 22 June 16, 2023) (finding employer’s administrative exemption argument undercut where job
 23 description included “previous sales experience”).¹⁶

24
 25 ¹³ Ex. 4 (Doyle Tr.) 139:8-14 (multiple Recruiters work on the same requisition).
 26 ¹⁴ Ex. 26 (Haycock Email October 26, 2020) at TEK-Recruiter_Lit-00386105.
 27 ¹⁵ Ex. 5 (Doyle Sealed Tr. Portion) 237:20-238:9; Pls.’ Br. at 3, n.4.
 28 ¹⁶ In fact, some recruiting firms classify their recruiters as inside sales employees. *See, e.g.* Ex. 96 (*Brain v. The Execu-Search Group, LLC* Letter to Court) at 2 (employer argued it correctly

1 Harris notes that 29 C.F.R. § 541.205(c) “relates to the quantitative component of the test.”
 2 *Harris*, 53 Cal. 4th at 182. Common evidence shows that Recruiters’ primary job duty is not
 3 quantitatively administrative because it does not involve carrying out “major assignments in
 4 conducting the operations of the business,” nor does their work “affect[] business operations to a
 5 substantial degree.” 29 C.F.R. § 541.205(c). In fact, TEK’s corporate witnesses testified that:

- 6 • **Recruiters are not involved in creating or implementing management, operational or human resources policies for TEK or TEK’s customers.** Ex. 6
 7 (Haycock Tr.) 158:20-162:5 (testifying that Recruiters do not create or implement
 8 human resource, operational, or management policies for TEK or its clients), 69:13-
 9 72:16 (TEK circulates a weekly “Executive Dashboard” to its executives and not
 Recruiters because the executives are “running [the] business.”); Ex. 3
 (DiBenedetto Tr.) 167:15-18.
- 10 • **Recruiters do not have the authority to negotiate or bind TEK or its customers with respect to significant matters.** Ex. 2 (Def.’s Resp. to Pls.’ 2nd
 11 Interrogatories) No. 1 (“The rates negotiated between Defendant and its customers
 12 are not relevant to the duties performed by Recruiters.”); Ex. 3 (DiBenedetto Tr.)
 13 109:23-110:3; Ex. 4 (Haycock Tr.) 161:3-5 (Recruiters cannot bind TEK in legal
 14 proceedings); Ex. 4 (Doyle Tr.) 194:13-16 (Q: But the customer makes the ultimate
 decision about the amount they’re willing to pay for the bill rate” A: Correct. Yes.).
- 15 • **Recruiters do not provide human resource services, employee benefit functions, or quality control services for TEK or its clients.** Ex. 6 (Haycock Tr.)
 16 123:1-24, 158:20-161:15; Ex. 4 (Doyle Tr.) 198:19-25, 209:2-12.

17 Notably, in *DeLodder v. Aerotek, Inc.*, the court found that common questions regarding
 18 whether Recruiters “perform office or non-manual work directly related to management policies
 19 or general business operations of the employer or its customers” predominated over individualized
 20 inquiries. No. 08 Civ. 806044, 2010 WL 11506881, at *13 (C.D. Cal. Aug. 16, 2010). The court
 21 denied class certification because it found substantively against plaintiffs on the merits of the issue.
 22 *Id.* However, the record here is distinguishable in material ways that change the merits evaluation
 23 but not the fact that common issues predominate over individualized issues. Plaintiffs point to
 24 common evidence that: (1) Recruiters are entry level employees far removed from the
 25 administration of TEK or its clients; (2) Recruiters are engaging in the services that TEK offers

27 classified recruiters as an inside sales exempt employee pursuant to 29 U.S.C. § 207(i)).

1 the marketplace; (3) Recruiters have the same *primary job duty*; and (4) only about a third of the
 2 requisitions on which TEK works get filled by TEK candidates. None of these facts were before
 3 the *DeLodder* court and the Court did not examine how the competitive sales nature of a recruiting
 4 business affected the Recruiters' job.¹⁷ Whether Recruiters' primary job duty is production is an
 5 issue in which common evidence predominate, as the *DeLodder* court noted.¹⁸ This is particularly
 6 true because Rule 23(b) "does not require a plaintiff seeking class certification to prove that each
 7 element of their claim is susceptible to classwide proof, so long as one or more common questions
 8 predominate." *DiMercurio v. Equilon Enterprises LLC*, No. 19 Civ. 04029, 2021 WL 3885973, at
 9 *8 (N.D. Cal. Aug. 30, 2021) (Corley, J.) (citation cleaned up).¹⁹

10 **D. Common Evidence Demonstrates Recruiters' Primary Job Duties Do Not
 11 Include Customarily and Regularly Exercising Discretion and Independent
 12 Judgment on Matters of Significance Subject Only to General Supervision.**

13 To avoid liability, TEK must *also* prove that the employees "customarily and regularly
 14 exercise discretion and independent judgment," *and* "perform[] under only general supervision
 15 work along specialized or technical lines requiring special training" or "execute . . . under only
 16 general supervision special assignments and tasks." *Ambrosia v. Cogent Commc'ns, Inc.*, 312
 17 F.R.D. 544, 553 (N.D. Cal. 2016). To meet the exemption, TEK must show that employees are
 18 "primarily engaged" in exempt work, meaning the workers are "engaged in the activities meeting
 19 the test for the exemption at least 50 percent of the time." *Id.* (citing *Eicher v. Advanced Bus.*

20 ¹⁷ *Andrade v. Aerotek, Inc.*, 700 F. Supp. 2d 738, 746 (D. Md. 2010), *Goff v. Bayada Nurses, Inc.*, 424 F. Supp. 2d 816, 821 (E.D. Pa. 2006), *Hudkins v. Maxim Healthcare Servs., Inc.*, 39 F. Supp. 2d 1349, 1350 (M.D. Fla. 1998) are not certification decisions and do not include quantitative evidence regarding Recruiters' production works and are, therefore, distinguishable.

21 ¹⁸ TEK does not rebut the other distinctions Plaintiffs note between this case and *DeLodder*.
 22 *See* Pls.' Br. at 36-37.

23 ¹⁹ The Tenth Circuit recently vacated a district court's denial of class certification in *Sherman v. Trinity Teen Solutions, Inc.* because the district court "misapplied Rule 23(a)'s commonality requirement by scrutinizing the proposed class for noncommon issues, rather than common ones." -- F.4th --, 2023 WL 7138509, *7 (10th Cir. Oct. 31, 2023) *Id.* at *7. The district court erred by assessing whether any individualized inquiries were necessary to resolve the putative class's claims instead of whether the proposed classes shared "*at least one common question of law or fact*, the resolution of which would drive the litigation." *Id.*

1 *Integrators, Inc.*, 151 Cal.App.4th 1363, 1371–72 (2007) (quoting Wage Order No. 4–2001)).

2 TEK does not rebut Plaintiffs’ common evidence that Recruiters’ *primary job duty* does not
 3 include customarily exercising discretion over *matters of significance*. TEK does not rebut the
 4 common evidence that TEK’s client’s requisition forms dictate the qualifications job candidates
 5 must have and that Recruiters’ primary job is to screen and match job candidates. Recruiters are
 6 multiple levels away from any staffing or hiring decisions (matters of significance) – multiple
 7 Recruiters submit multiple candidates for a single job to Account Managers, who in turn decide
 8 which candidates to submit to a third-party company, and that company’s hiring manager makes
 9 decisions on who to interview and hire. *Supra*. In engaging in intakes, TEK requires all Recruiters
 10 to perform G2 intakes and to enter that information into prompts in TEK’s database. *Supra*.
 11 Recruiters’ job duties do not rise to the level of discretion on matters of significance required by
 12 29 C.F.R. § 541.207(c)(5) (2000) (where an employee is screening potential job candidates by
 13 standards “set by the employee’s superior or other company officials, and the decision to hire from
 14 the group of applicants who do meet the standards is similarly made by other company officials[,]”
 15 [i]t seems clear that such a personnel clerk does not exercise discretion and independent
 16 judgment”). This is particularly true where the decision to hire rests with TEK’s customers and for
 17 the majority of requisitions that TEK works on, its customers do not hire *any* candidates provided
 18 by TEK. Ex. 5 (Doyle Sealed Tr. Portion) 237:20-238:9; *supra*.

19 TEK makes the mistake of “focus[ing] too much on the substantive issue” of whether
 20 Recruiters exercise discretion, “instead of whether that question could be decided using common
 21 proof.” *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal.4th 522, 537 (2014). The relevant
 22 question is not whether there were any individual variations in how much discretion Recruiters
 23 exercised, but rather, whether the extent of discretion, “whatever it might be, is susceptible to
 24 classwide proof.” *Id.* Common evidence demonstrates that Recruiters’ primary job duty does not
 25 involve regularly exercising discretion over matters of significance.

26 TEK does not dispute that it uniformly subjects Recruiters to multiple levels of supervision,
 27 that it monitors Recruiters’ compliance with the uniform “production metrics” on a weekly basis,
 28

1 that Recruiters' annual reviews are based on the same metrics, and that it has uniform discipline
 2 procedures based on the metrics. Pls.' Br. at 17-19. These extensive "production metrics" far
 3 exceed simply providing Recruiters with the company's "best practices." Def.'s Br. at 34; Pls.' Br.
 4 at 12-14. Rather, TEK admits that it even exercises control over the specific job duties "such as
 5 number of calls and outreaches to potential candidates" that Recruiters make on a weekly basis.
 6 Def.'s Br. at 7; *see Nelson*, 2015 WL 1778326, at *7 (question of whether recruiters were subjected
 7 to more than general supervision could be answered on a class-wide basis where supervisors
 8 monitored key performance indicators of all class members); *Alba v. Papa John's USA, Inc.*, No.
 9 05 Civ. 7487, 2007 WL 953849, at *11 (C.D. Cal. Feb. 7, 2007). As such, TEK subjects Recruiters
 10 to a high level of similar supervision.

11 The cases upon which TEK relies are distinguishable. *See* Def.'s Br. at 36-37. In *Bucklin v.*
 12 *Am. Zurich Ins. Co.*, a summary judgment decision, the Court found that it was "undisputed that
 13 plaintiffs had the authority to make certain binding, affirmative decisions on behalf of Defendant
 14 . . ." No. 11 Civ. 05519, 2013 WL 3147019, at *6 (C.D. Cal. June 19, 2013), *aff'd sub nom.*
 15 *Bucklin v. Zurich Am. Ins. Co.*, 619 F. App'x 574 (9th Cir. 2015). Here, the common evidence
 16 demonstrates that *TEK's clients* determine the job opening, requirements, hiring, firing, and pay.²⁰

17 **IV. The Court Should Disregard Defendant's Happy Camper Declarations or Give
 18 Them Little Weight.**

19 As discussed above and in Plaintiff's Brief, TEK's corporate documents, data, and
 20 testimony show that Recruiters perform a common primary job duty, are judged according to
 21 certain, uniform "production metrics," and do not create policy or advise TEK or its clients as to
 22 their management policies or general business operations. TEK disregards this evidence and

23
 24 ²⁰ The other cases TEK relies on for this point are similarly distinguishable because the
 25 employees had the authority to bind the companies on matters of significance. *See Maddox v.*
Cont'l Cas. Co., No. 11 Civ. 2451, 2011 WL 6825483, at *5 (C.D. Cal. Dec. 22, 2011) (plaintiffs
 26 could financially bind their employer); *Smith v. Gov't Employees Ins. Co.*, 590 F. 3d 886, 894 (D.C.
 27 2010) (same); *Zelasko-Barrett v. Brayton-Purcell, LLP*, 198 Cal. App. 4th 582, 590 (2011)
 28 (plaintiff made litigation preparation decisions); *Mekhitarian v. Deloitte & Touche (ICS), LLC*, No.
 07 Civ. 412, 2009 WL 6057248, at *1 (C.D. Cal. Nov. 3, 2009) (plaintiff prepared tax forms).

1 instead cites to a small number of current employee declarations to make its merits argument that
 2 all Recruiters were properly classified as administrators. TEK fails to explain why the corporate-
 3 level evidence on which Plaintiffs rely does not raise common legal and factual questions as to the
 4 principal merits issue or why it should be disregarded. *See* Def.'s Br. at 38-39.

5 **A. TEK's Declarations Contain Irrelevant Information and Raise Concerns
 6 About the Circumstances in Which They Were Obtained.**

7 TEK's declarations do not overcome Plaintiffs' class-wide evidence or raise issues that
 8 predominate. *First*, the declarations are primarily from individuals who have been promoted to the
 9 *Recruiter Lead* position or who are not Recruiters and describe their current job duties and not
 10 specifically their duties as Recruiters. In fact, one of the declarations is from an Account Manager
 11 who did not work as a Recruiter during the class period,²¹ six are from Recruiter Leads whose
 12 declarations use the present tense and thus appear to describe their current Recruiter Lead job
 13 duties,²² one does not identify the declarant's current job title but her LinkedIn profile states that
 14 she is a "Senior Specialized Recruiter,"²³ and one held the position of Recruiter II for a period of
 15 time but did not disclose that in the declaration.²⁴ Only six of the 13 declarations actually discuss
 16 Recruiters' duties (including the Senior Specialized Recruiter and the Recruiter II).

17 *Second*, the declarants are all current employees. "[C]ourts have expressed skepticism
 18 about the use of these 'happy camper' declarations to defeat a motion for class certification in
 19 wage and hour cases." *Nash v. Horizon Freight Sys., Inc.*, 2020 WL 7640878, at *1 (N.D. Cal. Dec.

20
 21 ²¹ ECF No. 68-6 (Stryker Dec.) ¶¶ 6, 10-11, 26-27 (Stryker became a Recruiter Lead in
 22 January 2018 and Delivery Manager in May 2021).

22 ²² ECF No. 68-4 (Guffy Dec.) ¶ ECF No. 68-8 (Mendez Dec.) ¶ 4; ECF No. 68-9 (McCarty
 23 Dec.) ¶¶ 24-25; ECF No. 68-11 ¶ 6; (Compton Dec.) ¶ 29; ECF No. 68-12 (Levine-Gorelick Dec.)
 24 ¶¶ 26-28; ECF No. 68-15 (Kehl Dec.) ¶¶ 16-17. TEK's brief is misleading as it states Lindzy
 25 McCarty is currently a Recruiter, when in fact McCarty has been a Recruiter Lead since November
 26 2021. ECF No. 68-9 (McCarty Decl.) ¶ 25.

27 ²³ ECF No. 68-15 (Ferrari Decl.) ¶ 4 ("On December 29, 2019, I was promoted to Recruiter,
 28 and I have been in different recruiting roles ever since."); Ex. 93 (Ferrari LinkedIn Profile).

28 ²⁴ Compare ECF No. 68-7 (Whitman Decl.) ¶ 4 ("On February 23, 2014 . . . , I was
 29 promoted to Recruiter, and I have been in different recruiting roles ever since.") with Ex. 95
 (Major Decl. 2) ¶ 11.

1 23, 2020) (collecting cases). Courts generally give little weight to employers' current employee
 2 declarations because they "reveal more about [the declarant's] loyalty than whether or not they
 3 had an . . . experience that would render them class members." *Avilez v. Pinkerton Gov't Servs.*,
 4 286 F.R.D. 450, 458-59 (C.D. Cal. 2012), *vacated and remanded sub nom., Avilez v. Pinkerton*
 5 *Gov't Servs., Inc.*, 596 F. App'x 579 (9th Cir. 2015) (citation cleaned up).²⁵ Happy camper
 6 declarations are even more suspect where, as here, defendants rely almost exclusively on them and
 7 largely ignore the voluminous evidence supporting certification. *See Sobolewski v. Boselli & Sons,*
 8 *LLC*, No.16 Civ. 01573, 2018 WL 3838140, at *4 (D. Colo. June 13, 2018).

9 In addition, the "Acknowledgment and Agreement" Forms (collectively, "Forms") attached
 10 to all the declarations raise further concerns about the manner in which TEK obtained them. There
 11 is no evidence that declarants were provided with neutral information about the lawsuit. The Forms
 12 do not state that declarants were provided with a copy of the complaint, do not identify the court
 13 or case number, such that declarants could conceivably access documents filed in this case, and do
 14 not note whether employees were advised that they could recover unpaid wages and other damages
 15 if the Plaintiffs prevail. The Forms also suggest that the declarants were specifically identified by
 16 TEK as people who would be willing to talk to its attorneys, which put undue pressure on these
 17 employees to comply with TEK's wish that they participate in its defense.²⁶ It also shows that these
 18 employees were not randomly selected but were cherry-picked by TEK.

19 Under similar circumstances, courts have assigned little weight to happy camper
 20 declarations, particularly those derived from current employees and where the record does not
 21 demonstrate transparency in the employers' communications about the lawsuit. *Nash*, 2020 WL
 22

23 ²⁵ *See also Morden v. T-Mobile USA, Inc.*, No. 05 Civ. 2112, 2006 WL 2620320, at *3 (W.D.
 24 Wash. Sept. 12, 2006) (discounting 99 declarations from current employees who were potential
 25 collective action members "because of the risk of bias and coercion inherent in that testimony.");
 26 *Mevorah v. Wells Fargo Home Mortg., Inc., a div. of Wells Fargo Bank*, No. 05 Civ. 1175, 2005
 27 WL 4813532, at *4 (N.D. Cal. Nov. 17, 2005) (explaining that "it is still reasonable to assume that
 an employee would feel a strong obligation to cooperate with his or her employer in defending
 against a lawsuit").

28 ²⁶ *See, e.g.*, ECF No. 68-13 at 8 ("We have asked TEKsystems to identify employees who
 might be willing to talk with attorneys so they can investigate the case.").

1 7640878, at *2 (assigning little evidentiary value to current employee declarations because,
 2 “[b]eyond the fact that happy camper declarations are submitted by companies with potentially
 3 significant influence over the workers who signed them,” there was further concern that the
 4 declarants were “relying on incomplete, or even false, information” related to the potential legal
 5 ramifications of what would happen if plaintiffs prevailed in their case).²⁷ In *O'Connor v. Uber*
 6 *Techs., Inc.*, the court expressed extreme distrust of defendant Uber’s current driver declarations
 7 where, like here, there was no evidence that the drivers were selected at random and neither the
 8 script Uber’s attorneys used to solicit the declarations, nor the declarations themselves, provided
 9 the court with any assurance that “[t]he[] drivers were free from the taint of biased questions.”
 10 *O'Connor v. Uber Techs., Inc.*, No. 13 Civ. 3826, 2015 WL 5138097, at *12-13 (N.D. Cal. Sept.
 11 1, 2015), *rev'd on other grounds*, 904 F.3d 1087 (9th Cir. 2018).²⁸

12 **B. TEK’s Declarations Do Not Contradict Plaintiffs’ Common Evidence.**

13 To the extent that TEK’s happy camper declarations have any probative value, they
 14 corroborate Plaintiffs’ testimony and demonstrate that common issues of fact predominate. *First*,
 15 TEK’s declarants confirm that the Recruiter job title, one of 46 different recruiting job titles,²⁹ is
 16 an entry level position.³⁰ Ten of TEK’s 14 declarants were promoted out of the Recruiter position
 17 into higher level positions.³¹

18 ²⁷ *Smith v. Cardinal Logs. Mgmt. Corp.*, No. 07 Civ. 2104, 2008 WL 4156364, at *7 (N.D.
 19 Cal. Sept. 5, 2008) (affording less weight to “happy camper” declarations where “the declarations
 20 demonstrate an incomplete grasp of the nature of Plaintiffs’ lawsuit”).

21 ²⁸ The *O'Connor* court found it particularly concerning that, while the solicitation script
 22 suggested “generically that class members might be entitled to restitution . . . – no possible dollar
 23 figure [was] mentioned” and there was no evidence that they were told that “were Plaintiffs to
 24 prevail, they might be entitled to thousands of dollars.” *Id.* at *12, n.11.

25 ²⁹ Ex. 1 (Def.’s Resp. to Pls.’ 1st Interrogatories) No. 2.

26 ³⁰ *Infra* n.30.

27 ³¹ ECF No. 68-4 (Guffy Decl.) ¶¶ 5-6 (promoted from Recruiter to Recruiter Lead and then
 28 to Team Lead – Delivery); ECF No. 68-6 (Stryker Decl.) ¶¶ 10, 26-27 (promoted from Recruiter to
 29 Account Manager and then to Recruiting Lead and Delivery Manager); ECF No. 68-8 (Mendez
 Decl.) ¶ 5 (promoted from Recruiter to Recruiter Lead); ECF No. 68-9 (McCarty Decl.) ¶¶ 24, 25
 (promoted from Recruiter to Recruiter Lead and then to Specialization Lead); ECF No. 68-11
 (Compton Decl.) ¶¶ 11, 29 (promoted from Recruiter to Recruiter Lead); ECF No. 68-12 (Levine-
 Gorelick Decl.) ¶¶ 7, 26, 27 (promoted from Recruiter to Recruiter Lead and then to Team Lead);

1 Second, TEK's declarations describe the same primary job duty that Plaintiffs and their
 2 declarants describe—searching for and contacting potential job candidates to fill open positions
 3 with TEK's clients.³² Specifically, they receive requisitions that identify the necessary skills and
 4 experience a candidate must have, search for candidates who fit the requisitions, and screen
 5 candidates to see if their experience and preferences match the requisitions.³³ If the Recruiter finds
 6 a match, the Recruiter informs the Account Manager, and the Account Manager decides whether
 7 the candidate will be presented to the client.³⁴ TEK emphasizes minor differences in how
 8 Recruiters perform their primary duty, such as whether Recruiters first search their personal
 9 networks, LinkedIn, or TEK's internal database, and how they screen candidates and determine if
 10 their skills and preferences match a requisition.³⁵ These differences, even if they were relevant, do

11 ECF No. 68-14 (Jones Decl.) ¶¶ 3-5 (promoted from Recruiter to retention Program Lead then to
 12 Account Manager then to Account Manager Recruiting Lead and then to Division Lead); ECF No.
 13 68-15 (Kehl Decl.) ¶¶ 4, 16 (promoted from Recruiter to Recruiter Lead and then to Team Lead
 14 Delivery II); *supra* ns. 23-24; Pls.' Br. at 4-5.

15 ³² ECF No. 68-5 (Rothermich Decl.) ¶ 13 (“My objective as a Recruiter is to help TEK's
 16 customers find the best candidates to fill the positions”); ECF No. 68-8 (Mendez Decl.) ¶ 20
 17 (“When I became a Recruiter Lead, I became responsible for two Recruiters one who works in the
 18 San Diego office and one who works in the Orange County office. Their job duties and
 19 expectations are similar to mine as a Recruiter.”); ECF No. 68-7 (Whitman Decl.) ¶¶ 5 (“The other
 20 Recruiters and I were responsible to find candidates whose skills were the right match for the job”);
 21 ECF No. 68-10 (Yancy Decl.) ¶ 8 (same); ECF No. 68-13 (Harvey Decl.) ¶ 7 (“[I] locate suitable
 22 candidates for the requirement from a variety of sources [and] contact the potential candidates and
 23 interview them to determine if they are a good fit for the position”); ECF No. 68-16 (Ferrari Decl.)
 24 ¶ 6 (“a job of a Recruiter is to find candidates who fit the requirements of TEK's customers”).

25 ³³ ECF No. 68-5 (Rothermich Decl.) ¶ 14, 19, 21, 22, 27, 28 (attesting that the starting point
 26 for her work as a Recruiter is the requisition or the description of the role that TEK's customer
 27 needs to fill and describing how she searches for candidates, and speaks to candidates to see if they
 28 match the job req); ECF No. 68-7 (Whitman Decl.) ¶¶ 5, 8, 17, 18, 21 (same); ECF No. 68-10
 (Yancy Decl.) ¶¶ 8, 14, 15 (same); ECF No. 68-13 (Harvey Decl.) ¶¶ 8, 10-11 (same); ECF No.
 68-16 (Ferrari Decl.) ¶¶ 6, 9 11 (same); ECF No. 68-17 (Budde Decl.) ¶¶ 15-18 (same).

29 ³⁴ ECF No. 68-5 (Rothermich Decl.) ¶ 12, 13, 15, 29; ECF No. 68-7 (Whitman Decl.) ¶¶ 9,
 30 14; ECF No. 68-10 (Yancy Decl.) ¶¶ 8, 19; ECF No. 68-13 (Harvey Decl.) ¶¶ 6, 17, 19, 21; ECF
 31 No. 68-17 (Budde Decl.) ¶ 19.

32 ³⁵ ECF No. 68-11 (Compton Decl.) ¶ 20 (“Sometimes I will speak with a candidate who is
 33 not the best match for the req I am working on but who I think will fit somewhere else. What that
 34 happens, I will add them to my network and look for other opportunities that need their skill and
 35 are a better fit.”); ECF No. 68-15 (Kehl Decl.) ¶ 12 (“If a candidate does not fit the job requirement
 I am working on, I typically still keep them in my network because they could be a fit for another

1 not undermine the common evidence that Recruiters' *primary* duty is the same. *Roseman*, 2017
 2 WL 4217150, at *7; *Nelson*, 2015 WL 1778326, at *9.

3 *Third*, TEK's declarants acknowledge that all Recruiters complete TEK's training program.
 4 Like Plaintiffs, TEK's declarants began their employment as Recruiter Trainees and then became
 5 salaried, exempt Recruiters only after they successfully completed TEK's training program.³⁶ This
 6 is consistent with corporate witness testimony.³⁷

7 *Fourth*, TEK's declarants confirm that Recruiters receive direction and supervision from a
 8 variety of sources, including through regular Red Zone meetings, communications with their
 9 supervisors, and daily communications with Account Managers "to discuss the status and
 10 challenges they are facing."³⁸

11 *Fifth*, TEK's declarants confirm that TEK evaluates all Recruiters based on the same
 12 "production metrics"—spread and activity goals. *See* Def.'s Br. at 37.³⁹ Recruiters who do not meet
 13 TEK's "production metrics" are subject to coaching and discipline.⁴⁰ This testimony corroborates
 14 the common evidence in Plaintiffs' opening brief regarding TEK's close supervision and

15 job.").

16 ECF No. 68-5 (Rothermich Decl.) ¶¶ 5-10; ECF No. 68-7 (Whitman Decl.) ¶¶ 3-4; ECF
 17 No. 68-10 (Yancy Decl.) ¶¶ 3-6; ECF No. 68-13 (Harvey Decl.) ¶¶ 3-4; ECF No. 68-16 (Ferrari
 18 Decl.) ¶¶ 3-4; ECF No. 68-17 (Budde Decl.) ¶¶ 4-9. TEK's attempt to distinguish Lindzy
 19 McCarty's training is disingenuous because she began working for TEK as a Sourcing Specialist,
 20 a now defunct position that was the same as what is now Recruiter Trainee. Ex. 94 (Haycock Dec.
 21 23, 2019 Email) TEK-Recruiter_Lit-00392464 ("All Sourcing Specialists will become Recruiter
 22 Trainees effective 1/5/202").

23 ³⁷ Ex. 23 (Andiamo Rule 30(b)(6) Tr.) 192:16-193:6; Ex. 3 (DiBenedetto Tr.) 47:10-16 (Q:
 24 "The training on Degreed that's provided to Recruiters, is that the same training that's provided to
 25 all Recruiters nationwide . . .?" A: "Yes."), 61:7-63:10, 68:13-69:10, 129:7-25; Ex. 4 (Doyle Tr.)
 55:15-18 (Q: "Do Recruiters . . . go through the same 13-week training . . . ? A: "They do, with a
 26 little bit of nuance"); Ex. 6 (Haycock Tr.) 129:17-132:12.

27 ³⁸ ECF No. 68-14 (Boland Jones Decl.) ¶ 17 ("Recruiters and Account Managers typically
 28 touch base at the beginning and the end of the day to discuss the status and challenges they are
 facing"); *see also* ECF No. 68-5 (Rothermich Decl.) ¶¶ 16, 18; ECF No. 68-7 (Whitman Decl.) ¶
 6, 26, 27; ECF No. 68-10 (Yancy Decl.) ¶ 9, 10;; ECF No. 68-16 (Ferrari Decl.) ¶¶ 7-8, 20; ECF
 No. 68-17 (Budde Decl.) ¶ 21.

29 ³⁹ ECF No. 68-6 (Stryker Decl.) ¶¶ 28-29; ECF No. 68-7 (Whitman Decl.) ¶ 10, 29; ECF No.
 68-17 (Budde Decl.) ¶¶ 24-25.

30 ⁴⁰ ECF No. 68-6 (Stryker Decl.) ¶¶ 27-30; ECF No. 68-17 (Budde Decl.) ¶ 27.

1 monitoring of Recruiters. Pls.' Br. at 12-19.

2 Finally, TEK's declarants all describe the same auxiliary duties that Recruiters perform on
 3 an as needed basis. For example, although Account Managers are responsible for the relationship
 4 with TEK's clients, Recruiters occasionally sit in on Account Managers calls with clients.⁴¹
 5 Likewise, Recruiters sometimes meet with candidates in advance of their client interviews,⁴² and
 6 periodically check in with and relay performance messages from clients to placed candidates.⁴³
 7 TEK argues that there are differences in how Recruiters perform these auxiliary duties, but the
 8 differences are immaterial in light of the overwhelming evidence that all Recruiters perform the
 9 same primary job duty. *Roseman*, 2017 WL 4217150, at * 7 ("The evidence of differences among
 10 the daily routines of the proposed class members or the differences in their auxiliary duties do not
 11 overcome the plaintiffs' evidence that the primary duty of the class members can be determined
 12 through generalized proof because that primary duty is consistent across the class.").

13 **V. This Case Is Triable As a Class Action.**

14 As a preliminary matter, Plaintiffs anticipate this case will be adjudicated at the summary
 15 judgment stage because there is no factual dispute that Recruiters' work is not directly related to
 16 TEK's or its customers' management or operations. However, should this case proceed to trial, all
 17 aspects of liability can be determined based on the common evidence. Attached as Exhibit 97 is a
 18 summary of the common evidence presented by Plaintiffs. Plaintiffs also plan to hire an expert to
 19 determine Recruiters' overtime hours based on their electronic footprint with TEK's software.⁴⁴

20
 21 ⁴¹ ECF No. 68-5 (Rothermich Decl.) ¶¶ 12, 15; ECF No. 68-7 (Whitman Decl.) ¶ 5, 7, 14;
 22 ECF No. 68-10 (Yancy Decl.) ¶¶ 8, 13; ECF No. 68-13 (Harvey Decl.) ¶¶ 6, 8; ECF No. 68-16
 23 (Ferrari Decl.) ¶ 8; ECF No. 68-17 (Budde Decl.) ¶ 14.

24 ⁴² ECF No. 68-5 (Rothermich Decl.) ¶ 33; ECF No. 68-10 (Yancy Decl.) ¶ 20; ECF No. 68-
 25 16 (Ferrari Decl.) ¶ 13; ECF No. 68-17 (Budde Decl.) ¶ 20.

26 ⁴³ ECF No. 68-5 (Rothermich Decl.) ¶¶ 36, 37; ECF No. 68-7 (Whitman Decl.) ¶ 25; ECF
 27 No. 68-10 (Yancy Decl.) ¶ 22, 23; ECF No. 68-13 (Harvey Decl.) ¶ 18; ECF No. 68-14 (Boland
 28 Jones Decl.) ¶ 20 ("TEK's expectation is that the Recruiter will engage with the consultant about
 once a month to gather information about any concerns or issues the consultant may have."); ECF
 No. 68-16 (Ferrari Decl.) ¶ 15.

Ex. 4 (Doyle Tr.) 115:14-132:20 (listing various electronic programs that can be used for
 proxy time records and noting that the computer system logs Recruiters off after 15 minutes).

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Respectfully submitted,

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